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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,960	06/26/2007	Dan O'Neill	KSR-11502/08	7398

7590 03/09/2010
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EXAMINER

LUONG, VINH

ART UNIT	PAPER NUMBER
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3656

MAIL DATE	DELIVERY MODE
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03/09/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,960	Applicant(s) O'NEILL ET AL.	
	Examiner Vinh T. Luong	Art Unit 3656	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Appendixes 1 and 2</u> |

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1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The abstract of the disclosure is objected to because of the implied phrase "is provided" and the legal phraseology "means." Correction is required. See MPEP § 608.01(b).

3. The listing of references (US Patent Applications Nos. 09/882,981 and 10/204,725) in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609.04(a) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Please note that MPEP § 609.01 requires the listing of each cited US application by application number, filing date, and inventor(s). In addition, Applicant is advised that the date of any re-submission of any item of information contained in the information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). Please see MPEP § 609.05(a).

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4. Claims 10-12 are objected to because of the following informalities: the claims have typographical error, e.g., the phrase "A support bracket" in line 3 of claim 10 should have been changed to "a support bracket." Appropriate correction is required.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1 and 10, the word "means" is preceded by the word(s), such as, e.g., "brake booster" in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

It is unclear whether the term that appears at least twice, such as, "a support bracket" in claims 1, 6, and 10 refers to the same or different things. Please see double inclusion in MPEP 2173.05(o). Applicant is respectfully suggested to identify each claimed element with reference to the drawings.

Claims 1, 6, and 10 recite the limitation "the housing." There is insufficient antecedent basis for this limitation in the claims.

Claims 4, 8, and 11 recite the limitation "said spaced apart side *arms*" (emphasis added). There is insufficient antecedent basis for this limitation in the claim.

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-4, 6-8, 10, and 11, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Douillet (EP 0680 863 cited in PCT International Preliminary Report on Patentability on October 10, 2005) in view of Yokochi et al. (US 7,051,616 filed on April 21, 2003).

Claim 1

Douillet teaches a pedal assembly for a vehicle with a support bracket containing an integral switch 7, 12, said brake pedal assembly comprising:

a support bracket (whereat the spring 11 is attached as seen in FIG. 1) having a generally planar mounting face, wherein said mounting face includes at least one aperture (not shown)) for securing the support bracket to the vehicle;

a side wall (at 30 in FIG. 1) extending radially from said mounting face, wherein an integral switch portion of said side wall contains a slot 13;

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a pivot means 10 *operatively* supported by said side wall;

a pedal arm 3 pivotally mounted onto said pivot means 10;

a pedal link 9 pivotally mounted onto said pivot means 10 and operatively connected to said pedal arm 3, wherein said pedal link 9 is a generally planar member;

at least one pair of contact posts (at the ends of 12 and 7 in FIGS. 1 and 2, see Appendix 1 hereinafter “App. 1”) disposed on said pedal link 9 and positioned so as to extend therethrough the corresponding arcuate slot 13 in said integral switch portion of said side wall;

a conductive means operatively interconnecting each contact post in the pair of contact posts (App. 1);

a brake booster means 4 operatively attached to said pedal link 9 and supported by a housing 2; and

said contact posts travel within the arcuate slot 13 in response to movement of the pedal arm 3 to electrically engage said switching means 7, 12 and send an electrical signal to a component 5, 8 in communication with the integral switch.

In summary, Douillet teaches the invention substantially as claimed except the first and second side walls of the support bracket and the switch cover plate.

Yokochi teaches the support bracket 13 (FIGS. 2 and 6) having a generally planar mounting face (see Appendix 2 hereinafter “App. 2”), wherein said mounting face includes at least one aperture (App. 2); a first side wall (App. 2) and a second side wall 18b spaced a predetermined distance apart from said first side wall, and each side wall extends radially from said mounting face (FIG. 6); and a switch cover plate 18b secured to said first side wall in order to provide a compact assembly. (Yokochi 3:65-4:22).

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It would have been obvious to one having ordinary skill in that art at the time the invention was made to integrally form the first and second side walls of the support bracket and the switch cover plate in Douillet's pedal assembly in order to provide a compact assembly as taught or suggested by Yokochi. The modification of Douillet's brake pedal apparatus by integrally forming the first and second side walls and the switch cover plate as taught or suggested by Yokochi would not have been uniquely challenging to a person of ordinary skill in the art because it is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for the improvement" *KSR Int'l. Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) and it "does no more than yield predictable results." *KSR* at 1739. See also *stare decisis* regarding making integral in MPEP § 2144.04.

Claim 2

Yokochi's first side wall includes an outwardly projecting switch wall (at 18 in FIG. 2, see App. 2) defining a perimeter of the integral switch portion of said first side wall, and said switch cover 18b is secured to said switch wall.

Claim 3

Yokochi's connector (at 18a in FIGS. 2 and 3) is integrally formed with the switch cover plate 18b. It is well settled that the term "integral" is sufficiently broad to embrace constructions united by such means as fastening and welding. See *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973) and *In re Morris*, 43 USPQ2d 1753, 1757 (CAFC 1997). Integral is not necessarily restricted to one-piece article. *In re Kohno*, 157 USPQ 275 (CCPA 1968).

Claim 4

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See Yokochi's upper wall (FIGS. 2 and 3 in App. 2) interconnecting said spaced apart first and second side walls (FIG. 2 in App. 2), wherein said upper wall is generally parallel to and spaced a predetermined distance from said mounting face and said upper wall includes at least one aperture (FIG. 2 in App. 2) for securing the support bracket 13 to the vehicle.

Claims 6-8, 10, and 11

See claims 1-4 above and note Douillet's conductive strip in App. 1.

10. Claims 5, 9, and 12, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Douillet in view of Yokochi as applied to claim 1, 6, or 9 above, and further in view of Plaffenberger et al. (US 6,426,619).

Douillet and Yokochi teach the invention substantially as claimed. However, Douillet and Yokochi do not teach the switching means being a printed circuit board.

Plaffenberger teaches the switching means being a printed circuit board 70 in order to send the signal.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Douillet's switching means by the printed circuit board in order to send the signal as taught or suggested by Plaffenberger. *KSR, supra*.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Willemsen et al.'431 (FIG. 4), Willemsen et al.'929 (FIG. 10), and Staker (slot 78).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday, Tuesday, Thursday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Ridley can be reached on 571-272-6917. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vinh T Luong/
Primary Examiner, Art Unit 3656